

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Ted Winninger,**  
Petitioners-Appellants,

**v.**

**Black Hawk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-07-1574**  
**Parcel No. 8913-28-201-005**

On March 22, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Ted Winninger was self-represented. Assistant County Attorney David Mason represented the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Ted Winninger is the owner of property located at 2831-35 University Avenue, Waterloo, Iowa. The real estate was classified commercial on the January 1, 2011, assessment and valued at \$205,310, representing \$108,000 in land value and \$97,310 in improvement value. Winninger protested the assessment to the Black Hawk County Board of Review on the grounds that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1) and that the property was assessed for more than authorized by law under section 441.37(1)(a)(2). He believed the correct market value was \$155,610.

The Board of Review granted the protest, in part, reducing the total assessment to \$195,250, allocated \$108,000 in land value and \$87,250 in improvement value.

Winninger then appealed to this Board reasserting his claims.

The property record card indicates the subject is a small retail store, built in 1957. It is a one-story building with 4174 square-feet<sup>1</sup> and no basement. There are 12,900 square feet of asphalt paving, and two wood and steel sign poles. The site is 0.496 acres.

Winniger provided six properties for equity comparison. The following chart summarizes the limited information he provided.

Comp	Address	Assessed Value	Assessed Value per Square Foot	Sale Price	Sale Date	Building Size	Sales Price per Square Foot
1	2761 University	\$369,690	\$37	n/a	n/a	10,000	n/a
2	2751 University	\$157,750	\$53	n/a	n/a	n/a	n/a
3	2830 University <sup>2</sup>	\$886,980	\$24	\$942,500	May-09	36,514	\$25.81
4	2709 University	\$335,310	\$42	n/a	n/a	7,908	n/a
5	4051 University	\$359,970	\$22	n/a	n/a	n/a	n/a
6	4017 University	n/a	\$47	\$200,000	n/a	5,267	\$37.97

Only two properties (Comparables 3 and 6) had sold. However, regarding Comparable 6, Winniger testified the sale occurred about “five years ago” and the buyer “had to purchase” because a business was leaving. Due to the date of this sale and the reason it occurred, we hesitate to rely on the sales price as evidence of market value.

Deputy Assessor Tami McFarland provided additional information regarding Winniger’s Comparables 1 through 5 in a March 14, 2013, letter. Comparable 6 was not included in the original appeal, and for that reason McFarland did not address it in her letter. McFarland’s letter explains the subject property is a one-story small retail store with three separate businesses. Comparables 1, 3, and 5 are all large retail stores and the pricing for these properties is different in the IOWA REAL PROPERTY APPRAISAL MANUAL. She cites other differences between these properties and the subject as well, including differences in age, condition, style, and exterior veneer.

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<sup>1</sup> Winniger asserts the correct size of the building is 4020 square feet.

<sup>2</sup> Both Winniger and the Board of Review note Comparable 3 as “Hancock Fabrics.” However, they report different addresses and some different information (size of the building).

Comparables 2 and 4 each have three separate businesses like the subject property. However, Comparable 2 is much smaller having only 2940 square feet. Additionally, McFarland indicates these properties are office buildings and states her belief that neither of these properties are comparable because small retail stores are priced different than an office building.

Winner also asserts Vanguard Appraisal incorrectly measured the subject property. We note that it does not appear he raised this claim before the Board of Review, as it is not noted on his petition. He claims the correct size of the subject is 4020 square feet; and that Vanguard made an error on the north and west wall measurements. Where the reported measurements are 49 feet (north) and 48 feet (west), he states they should be 48 feet and 46 feet respectively. McFarland notes in her letter that she had an appraiser verify the listing on the subject property on March 8, 2013. Because of that inspection, it was determined that no adjustments were necessary. It is unclear however, if the property was actually measured.

Lastly, Winner testified that the Iowa Department of Transportation (DOT) is planning a roundabout on University Avenue, which he asserts will cut off access to his property. He acknowledged the DOT plan is only a proposal and “not set in stone,” although he believes it is “pretty obvious” that it will occur. Ultimately, we give this DOT proposal no consideration regarding the current value of the subject property.

Winner did not provide any evidence of the market value of the subject property.

### ***Conclusion of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds

presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.

*Id.* at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied. Winner provided six properties for equity comparison, but failed to provide either a sales price or a market value for each of the properties in order to complete a sale ratio analysis. While sales prices were provided for two properties, they were either not comparable or the sales price is not considered to be reflective of market value.

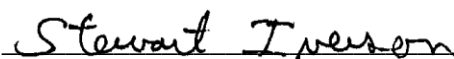
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the appellant has a two-fold burden. *Boekeloo v. Bd. of Review of the City of Black Hawk*, 529 N.W.2d 275, 277 (Iowa 1995). First, the appellant must show that the assessment is excessive. Iowa Code § 441.21(3); *Boekeloo*, 529 N.W.2d at 276-77. Second, the appellant must provide evidence of the property's correct value. *Boekeloo*, 529 N.W.2d at 276-77. Winner did not provide any evidence regarding the subject property's correct market value as of January 1, 2011.

THE APPEAL BOARD ORDERS the assessment of the Ted Winner's property located at 2831-2835 University Avenue, Waterloo, Iowa, is affirmed with a total value of \$195,250, as of January 1, 2011.

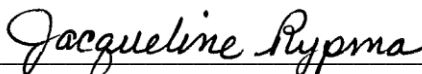
Dated this 6th day of May 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:


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Waterloo, Iowa 50701  
APPELLANTS

David J. Mason  
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Waterloo, Iowa 50701  
ATTORNEY FOR APPELLEE

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on May 6, 2013.

By: ☒ U.S. Mail ☐ FAX  
☐ Hand Delivered ☐ Overnight Courier  
☐ Certified Mail ☐ Other

  
Signature \_\_\_\_\_